

DESTITUTE PERSONS BILL.

MEMORANDUM.

THIS Bill repeals, and re-enacts with numerous alterations, the Destitute Persons Act, 1908, which is itself a consolidation of the Destitute Persons Act, 1894, and its amendments. Most of the alterations made by this Bill relate to the details of judicial procedure, but attention may be called to the following amendments in matters of substance :—

- (1.) An amended definition of “near relative,” with special reference to the effect of adoption and to illegitimate relationships. (Section 4.)
- (2.) Power to order payment on account of past maintenance, as well as maintenance for the future. (Sections 8 (4), 18 (4), 23 (6).)
- (3.) Amended definition of “parent” with reference to the liability of parents for deserting children or leaving them without maintenance. (Section 23.)
- (4.) Provisions as to effect of the death or bankruptcy of persons against whom maintenance orders have been made. (Sections 17, 32, 33.)
- (5.) Better provisions as to attachment of wages in satisfaction of maintenance orders. The present law is unworkable. (Section 39.)
- (6.) Amended provisions as to recovery from relatives of the cost of the maintenance of persons in public or charitable institutions. (Section 43.)
- (7.) Further provisions making it an indictable offence to desert a wife or child by leaving New Zealand. (Sections 44 to 51.)
- (8.) Better provisions enabling a Magistrate to have evidence taken before another Magistrate in the case of witnesses at a distance. (Section 70.)
- (9.) Provisions for giving effect in New Zealand to affiliation and maintenance orders made in Australia. (Section 71.)
- (10.) Repeal of Part II of the Married Women’s Property Act, 1908 (which re-enacts the Married Women’s Property Protection Act, 1880), as being obsolete, except for the purposes of the Licensing Act.
- (11.) Repeal of Part VI of the Divorce and Matrimonial Causes Act, 1908 (which re-enacts the Married Persons Summary Separation Act, 1896). This Act overlaps the Destitute Persons Act in an embarrassing manner, and all necessary provisions for the maintenance and summary separation of husbands and wives are now included in this Bill and governed by the same procedure.

JOHN W. SALMOND,
Counsel to the Law Drafting Office.

Hon. Dr. Findlay.

DESTITUTE PERSONS.

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A BILL INTITLED

Title.

AN ACT to make Provision for the Maintenance of Destitute Persons, Illegitimate Children, and Deserted Wives and Children.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title and commencement.

1. This Act may be cited as the Destitute Persons Act, 1909, and it shall come into operation on the first day of January, nineteen hundred and ten.

Interpretation.

2. In this Act, unless a different intention appears,—

“Adequate maintenance” means maintenance reasonably sufficient for the necessities of the person to be maintained, irrespective of the means or ability of the person who is bound to afford such maintenance:

“Adoptive father” or “adoptive mother” means any man or woman, as the case may be, who has adopted any other person as a son or daughter under the provisions of the Adoption of Children Act, 1881, the Adoption of Children Act, 1895, or Part III of the Infants Act, 1908, under an order of adoption which remains in force:

- “Adoptive parent” means an adoptive father or adoptive mother :
- “Affiliation order” means an order made under this Act adjudging any person to be the father of an illegitimate child :
- 5 “Charitable institution” means—
A Hospital Board, or Charitable Aid Board, or Hospital and Charitable Aid Board, or separate institution under the Hospitals and Charitable Institutions Act, 1908 ; or
- 10 Any body corporate or society established for any purpose of public charity or benevolence, and declared by the Governor by Order in Council under the authority of this Act to be a charitable institution for the purposes of this Act :
- 15 “Child” means any person under the age of sixteen years :
- “Defendant” means any person against whom an affiliation order or maintenance order has been made under this Act, or against whom any such order is sought by a complainant under this Act, or against whom an information has been laid under this Act :
- 20 “Destitute person” means any person unable, whether permanently or temporarily, to support himself by his own means or labour :
- 25 “Legitimate person” means a person who is of legitimate birth or who has been legitimated by the subsequent marriage of his father and mother :
- “Maintenance” and “maintain” include lodging, feeding, clothing, teaching, training, medical and surgical relief, and in respect of any deceased person the cost of his funeral :
- 30 “Maintenance order” means an order made under this Act for the payment of money for or in respect of the past or future maintenance of any person, and includes an affiliation order :
- 35 “Minister” means the Minister of Justice, or any other Minister of the Crown who is for the time being charged with the administration of this Act :
- “Mother,” “grandmother,” or “stepmother” includes any such person whether under coverture or not :
- 40 “Public institution” means—
An industrial school under the Industrial Schools Act, 1908, other than a local or private school ;
A public lunatic asylum under the Lunatics Act, 1908 ;
- 45 A foster-home under Part V of the Infants Act, 1908, so far as relates to children maintained therein wholly or partly at the public cost under that Act ;
Any institution (other than a prison) supported wholly or mainly out of the public revenues and declared by the Governor by Order in Council under the authority of this Act to be a public institution for the purposes of this Act :
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“ Unmarried woman ” includes a widow and a woman who has been divorced from her husband.

PART I.

MAINTENANCE OF DESTITUTE PERSONS BY NEAR RELATIVES.

Liability of near relatives for maintenance of destitute person.

“ Near relative ” defined.

3. Every near relative of a destitute person, if that relative is of sufficient ability, is liable for the maintenance of that destitute person in manner hereinafter provided. 5

4. (1.) In this Act the term “ near relative ” means, with respect to a legitimate person, his father, mother, grandfather, grandmother, son, daughter, grandson, granddaughter, brother (of the whole or half-blood), or sister (of the whole or half-blood). 10

(2.) In this Act the term “ near relative ” means, with respect to an illegitimate person, his mother, mother’s father or mother, son, daughter, grandson, or granddaughter, or any person who has been adjudged under this Act or under the Destitute Persons Act, 1908, or the Destitute Persons Act, 1894, or any Act thereby repealed, to be the father of that illegitimate person. 15

(3.) Every illegitimate person shall for the purposes of this Act be deemed to be a near relative of all persons who are his near relatives under this Act. 20

(4.) For the purposes of this Act an adoptive parent shall be deemed to be a near relative of the person adopted, and an adopted son or daughter shall be deemed to be a near relative of his or her adoptive parent.

(5.) For the purposes of this Act an adoption shall not be deemed to create or to have created any relationship between the person adopted and the relatives of the adoptive parent, or to destroy or to have destroyed any natural relationship existing between any persons. 25

Magistrate may make maintenance order against near relative.

5. (1.) On the complaint of any person that the complainant or any other person is a destitute person, and has a near relative within New Zealand of sufficient ability to contribute to the maintenance of that destitute person, a Justice of the Peace may summon that near relative to show cause why a maintenance order should not be made against him. 30

(2.) A Magistrate hearing the complaint, on being satisfied of the truth thereof, may, in his discretion, if having regard to all the circumstances of the case he thinks fit so to do, order the near relative to pay towards the future maintenance of the destitute person a sum of money at a rate not exceeding *twenty* shillings a week, at such times and in such manner as the Magistrate thinks fit. 35

Liability as to maintenance not affected by agreement.

6. No agreement shall be effective so as to take away or restrict any liability imposed on any person by this Act to contribute to the maintenance of any person of whom he is a near relative; or affect the operation of any maintenance order made under this Act, or the right of a Magistrate to make any such order. 40

Destitute person need not be resident in New Zealand.

7. A complaint or order may be made under this Part of this Act whether the destitute person is resident in New Zealand or elsewhere. 45

PART II.

AFFILIATION ORDERS.

8. (1.) On complaint on oath made—

5 (a.) By the mother of an illegitimate child that any person is the father of that child; or

(b.) By any person other than the mother of the child that any person is the father of an illegitimate child, and has failed to provide for its adequate maintenance,—

10 a Justice of the Peace may summon the person so alleged to be the father of the child to answer the complaint.

(2.) A Magistrate hearing the complaint, on being satisfied of the truth thereof, may make an affiliation order adjudging the defendant to be the father of the child.

15 (3.) In such order, unless the child is dead before the making of the order, the Magistrate may also order the defendant to pay, at such times and in such manner as the Magistrate thinks fit, a reasonable sum of money at a rate not exceeding *twenty* shillings a week towards the future maintenance of the child until it attains the age of sixteen years.

20 (4.) In any affiliation order the Magistrate may, if in his discretion he thinks fit, having regard to all the circumstances of the case, order the defendant to pay in such manner and at such times and to such person as the Magistrate directs,—

25 (a.) Such sum as the Magistrate thinks fit on account of the expenses of and incidental to the birth of the child, whether born alive or dead; and

(b.) Such sum as the Magistrate thinks fit on account of the expenses of and incidental to the funeral of the child, if it is dead before the making of the order; and

30 (c.) Such sum as the Magistrate thinks fit, not exceeding *fifty* pounds, on account of the past maintenance of the child before the making of the order.

35 (5.) No affiliation order shall be made unless the complaint is made within six years after the birth of the child, unless the person so alleged to be the father of the child has contributed to or made provision for the maintenance of the child, or has since the birth of the child cohabited with the mother as man and wife, in which case the complaint may be made at any time after the expiration of the said period of six years, if within the twelve months immediately

40 preceding the making of the complaint the person so alleged to be the father of the child has contributed to or provided for the maintenance of the child, or has so cohabited with its mother:

45 Provided always that if at any time the person so alleged to be the father of the child has been absent from New Zealand, the period of his absence shall not be counted in computing the respective periods of six years or twelve months.

(6.) No such complaint or affiliation order shall be made unless the child is under sixteen years of age at the time of the complaint or has before that time died under the age of sixteen years.

50 9. (1.) On complaint on oath made by any person that the complainant or any other person is an unmarried woman and is with child, and that any person is the father of that unborn child,

Magistrate may make affiliation order against father of illegitimate child.

Affiliation order in case of unborn child.

a Justice of the Peace may summon the person so alleged to be the father of that unborn child to answer the complaint.

(2.) A Magistrate hearing the complaint, on being satisfied of the truth thereof, may make an affiliation order adjudging the defendant to be the father of the unborn child.

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(3.) If at the time of the making of the order the child is already born, the Magistrate may at the same time make the same orders for the payment of maintenance and of other moneys as in the case of an affiliation order made under the provisions of section *eight* hereof.

(4.) If at the time of the making of an affiliation order under this section the child is not already born, no order for the payment of maintenance or other moneys as aforesaid shall be made until after the birth of the child.

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(5.) At any time after the birth of the child, and whether the child is then alive or dead, a Justice of the Peace, on the complaint of the mother or of any other person that the person so adjudged to be the father of the child has failed to provide adequate maintenance for the child, or to pay the expenses of or incidental to the birth or death of the child, may summon that person to answer the complaint.

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(6.) Any such complaint shall be heard and determined before a Magistrate, who need not be the Magistrate by whom the affiliation order was made.

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Magistrate may make maintenance order after birth of child.

(7.) On any such complaint the affiliation order shall be conclusive proof of the paternity of the child, and the Magistrate hearing the complaint may make an order against the defendant ordering him to make any such payments, whether on account of the maintenance of the child or otherwise, as might be ordered to be made on a complaint under the provisions of section *eight* hereof.

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Evidence of mother.

10. (1.) The evidence of the mother of an illegitimate child, or of any woman who is with child as aforesaid, shall not be necessary for the making of an affiliation order or maintenance order.

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(2.) No person shall be adjudged to be the father of an illegitimate child upon the evidence of the mother or of a woman who is with child as aforesaid, unless her evidence is corroborated in some material particular to the satisfaction of the Magistrate.

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Dismissal of complaint no bar to further proceedings.

11. The dismissal of a complaint under this Part of this Act or the refusal of a Magistrate to make an affiliation order or maintenance order in pursuance of any such complaint shall in no case be a bar to the making of a further complaint in the same matter and against the same or any other defendant by the same or any other complainant.

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Apprehension of person alleged to be the father of illegitimate child.

12. When any complaint has been made under the foregoing provisions of this Part of this Act, and the matter thereof is substantiated on oath, the Justice of the Peace to whom the same is made or any other Justice of the Peace may at any time, if he thinks fit, without the issue of a summons or after the issue of a summons, issue his warrant to apprehend the defendant, and cause him to be brought before a Magistrate to answer the complaint and be further dealt with according to law.

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Liability of father not affected by adoption of child.

13. The adoption of an illegitimate child, whether before or after the commencement of this Act, shall not prevent the making of an affiliation or maintenance order against the natural father of that child, in the same manner as if no such adoption had taken place,

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and shall not affect the validity or operation of any affiliation or maintenance order made under this Act against the natural father before the adoption; but a Magistrate may, in his discretion, having regard to all the circumstances, refuse to make an affiliation or maintenance order against the natural father of a child so adopted.

14. No agreement between the father of an illegitimate child and the mother of the child, or between the father and any other person, shall operate so as to take away or limit the liability of the father for the maintenance of the child or for any other moneys payable by him in respect of the child, or affect the operation of any affiliation or maintenance order made against the father, or the right of any Magistrate to make any such order; but a Magistrate may, in his discretion, having regard to the existence of the agreement and to all the circumstances of the case, refuse to make any such order.

Liability of father not affected by agreement.

15. Any complaint or order may be made under this Part of this Act, whether the illegitimate child is born or resident in New Zealand or elsewhere, and whether the father or mother of the child is resident in New Zealand or elsewhere, and although the mother or child is already dead at the time of the making of the complaint or order, and whether the child was born alive or dead.

Father, mother, or child need not be resident in New Zealand.

Mother or child may be dead.

16. Every Magistrate by whom an affiliation order is made after the birth of a child, or by whom a maintenance order is made in pursuance of an affiliation order made before the birth of a child, shall, if the child has been born in New Zealand, forthwith give notice of the order so made by him to the Registrar of Births and Deaths for the district wherein the child was born, who shall thereupon, notwithstanding anything to the contrary in the Births and Deaths Registration Act, 1908, register the person against whom the affiliation order has been made as the father of the child.

Magistrate to notify Registrar of Births as to order, and Registrar to register name of father of child.

17. (1.) On the death of the father or mother of an illegitimate child under the age of sixteen years, whether the child has been adopted by any other person or not, any person may make complaint on oath to a Justice of the Peace that the deceased person was the father or mother of the child, and the Justice may thereupon issue a summons to the executor or administrator of the deceased person, or to the Public Trustee administering the estate of that person, to show cause why an order should not be made under this section.

In case of death of parent of illegitimate child Magistrate may make an order against estate of deceased.

(2.) A Magistrate hearing the complaint, if he is satisfied of the truth thereof, may in his discretion, having regard to all the circumstances of the case, make an order for the payment out of the estate of the deceased person of such reasonable allowance as he thinks fit, not exceeding *twenty* shillings a week, for the future maintenance of the child until he attains the age of sixteen years or such lesser age as the Magistrate in the said order determines, or for the payment out of that estate of a lump sum for the maintenance of the child not exceeding the maximum aggregate amount that might be made payable by way of such allowance as aforesaid.

(3.) Every sum of money so ordered to be paid shall constitute a debt of the deceased payable out of his estate in the same manner as his other debts and liabilities, but shall be postponed to all other debts and liabilities.

(4.) Nothing in this Act relating to the enforcement of maintenance orders or to the punishment of the breach thereof shall apply to any maintenance order made under this section, but all sums of money payable under any such order shall from time to time as they become due be recoverable by action at the suit of the person to whom they are payable in accordance with the terms of the order. 5

(5.) No such order shall be made unless the Magistrate is satisfied that it can be made without inflicting undue hardship on the widow or legitimate children of the deceased, or if he is satisfied that the illegitimate child is possessed of adequate means of maintenance. 10

(6.) No such order shall be made unless the complaint is made and a summons is served on the executor or administrator of the deceased, or on the Public Trustee administering his estate, within six months after the grant of probate or letters of administration, or after commencement of the administration of the estate by the Public Trustee, as the case may be. 15

(7.) Except where an affiliation order has been made in his lifetime against the father of the illegitimate child, no order shall be made under this section against the estate of the father except on a complaint made under this section within the time hereinbefore limited for the making of a complaint in which an affiliation order is sought against the father of an illegitimate child. 20

(8.) When an affiliation order has been made in his lifetime against the father of an illegitimate child, that order shall in any complaint under this section be sufficient evidence of the paternity of the child unless the contrary is proved. 25

(9.) The provisions hereinbefore in this Act contained as to the evidence of the mother of an illegitimate child shall apply to any complaint under this section.

(10.) The provisions of this section shall extend and apply to an illegitimate child born after the death of its father. 30

(11.) Nothing in this section shall apply to the intestate estate of the mother of an illegitimate child in any case in which the child has a right of succession to that estate or to any part thereof.

PART III.

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HUSBAND AND WIFE.

Magistrate may
make order against
husband for
maintenance of
wife.

18. (1.) On complaint made by any married woman or by any other person—

(a.) That the husband of that woman has failed to provide her with adequate maintenance; or 40

(b.) That he has been guilty of persistent cruelty to her or to her children; or

(c.) That he is an habitual drunkard; or

(d.) That he has, within six months before the making of the complaint and whether before or after the commencement of this Act, been convicted summarily or otherwise of any assault or other offence of violence against her or any of her children, and has been sentenced for that offence to a term of imprisonment exceeding one month or to a fine exceeding five pounds,— 45

a Justice of the Peace may issue his summons to the husband to answer the complaint. 50

(2.) On any such complaint as aforesaid, if the matter thereof is substantiated on oath, the Justice of the Peace to whom the complaint is made, or any other Justice, may at any time, if he thinks fit, in lieu of issuing a summons or after the issue of a
5 summons, issue his warrant to apprehend the defendant and cause him to be brought before a Magistrate to answer the complaint and to be further dealt with according to law.

(3.) A Magistrate hearing the complaint, on being satisfied of the truth thereof, may, if he thinks fit, having regard to all the
10 circumstances of the case, make a maintenance order against the husband directing him to pay towards the future maintenance of his wife a reasonable sum, not exceeding *twenty* shillings a week, at such times and in such manner as the Magistrate thinks fit.

(4.) The Magistrate may also, in his discretion, if he is satisfied
15 that the husband is of sufficient ability, order him to pay on account of the past maintenance of his wife any sum not exceeding *fifty* pounds at such time or times and in such manner as the Magistrate thinks fit.

(5.) Such an order in respect of past maintenance may be made
20 although the wife is dead at the time of the complaint or at the time of the order.

(6.) No maintenance order shall be made against a husband in favour of his wife on the sole ground of his failure to provide adequate maintenance for his wife, if in the opinion of the Magis-
25 trate there is reasonable cause for that failure; but if the wife is a destitute person her adultery or other misconduct shall not in itself be deemed a reasonable cause for any such failure.

(7.) Unless the Magistrate is satisfied that the wife is a destitute person, no maintenance order shall be made against the husband in
30 favour of the wife, if it is proved that the husband is not of sufficient ability to contribute to her maintenance.

(8.) Where the husband and wife are living apart from one another, and the wife has in the opinion of the Magistrate reasonable cause for refusing or failing to live with her husband, the husband
35 shall not be deemed to have provided her with adequate maintenance merely by reason of the fact that he is willing and ready to support her if and so long as she lives with him.

19. (1.) On the hearing of any complaint under the *last pre-*
40 *ceding* section the Magistrate may, if he thinks fit, having regard to all the circumstances of the case, either in addition to or in lieu of a maintenance order (and whether or not there is jurisdiction to make a maintenance order), make either or both of the orders following, that is to say:—

(a.) An order that the married woman be no longer bound to
45 cohabit with her husband (which order is hereinafter referred to as a separation order):

(b.) An order committing to the married woman the legal
50 guardianship of the children of the marriage while under the age of sixteen years (which order is hereinafter referred to as an order of guardianship).

(2.) A separation order while it remains in force shall have the effect in all respects of a decree of judicial separation on the ground

Separation orders
and orders of
guardianship.

of cruelty under the provisions of Part I of the Divorce and Matrimonial Causes Act, 1908.

(3.) An order of guardianship shall, while it remains in force, confer upon the married woman, to the exclusion of her husband, the custody of all children of the marriage (whether born before or after the date of the order) until the age of sixteen years, and she shall have in respect of those children the same powers, rights, duties, and liabilities as if she had been appointed as their guardian by the Supreme Court. 5

(4.) No separation order or order of guardianship shall be made on the sole ground of the failure of the husband to provide adequate maintenance for his wife, unless in the opinion of the Magistrate such failure was wilful and without reasonable cause. 10

(5.) No separation order shall preclude the married woman in whose favour it has been made from obtaining a divorce *a vinculo matrimonii* in the same manner and on the same grounds as if no such separation order had been made or was in force. 15

Magistrate may
make order against
wife for maintenance
of husband.

20. (1.) On the complaint of any husband or of any other person that the husband is or was a destitute person, and that his wife is of sufficient ability by her own means or labour to contribute to his maintenance, and that she has failed to provide for his adequate maintenance according to her ability, a Justice of the Peace may issue his summons to the wife to answer the complaint. 20

(2.) If the Magistrate hearing the complaint is satisfied of the truth thereof, he may, if in his discretion he thinks fit having regard to all the circumstances, make a maintenance order against the wife, directing her to pay towards the future maintenance of her husband a reasonable sum not exceeding *twenty* shillings a week, at such times and in such manner as the Magistrate thinks fit. 25

(3.) The Magistrate may also, in the like discretion, if he is satisfied that the wife is of sufficient ability, order her to pay on account of the past maintenance of her husband any sum not exceeding *fifty* pounds at such time or times and in such manner as the Magistrate thinks fit. 30

(4.) Such an order in respect of past maintenance may be made although the husband is already dead at the time of the complaint or of the order. 35

(5.) No maintenance order shall be made against a wife in favour of her husband if, in the opinion of the Magistrate, there is reasonable cause for the failure of the wife to make provision for the adequate maintenance of her husband. 40

(6.) Where the husband and wife are living apart from one another, and the husband has in the opinion of the Magistrate reasonable cause for refusing or failing to live with his wife, the wife shall not be deemed to have provided for the adequate maintenance of her husband merely by reason of the fact that she is willing and ready to support him if and so long as he lives with her. 45

Agreement between
husband and wife
not to affect mutual
liability as to
maintenance.

21. No agreement made between a husband and wife shall be effective to take away or restrict any liability imposed by this Act on either of them for the maintenance of the other, if and so long as the other is a destitute person, or affect the operation of any maintenance order made under this Act, or the right of a Magistrate to make any such order. 50

22. Any complaint or order may be made under this Part of this Act, whether the husband or wife against whom or in whose favour the order is sought is resident in New Zealand or elsewhere. Husband or wife need not be resident in New Zealand.

PART IV.

5

MAINTENANCE OF CHILDREN.

23. (1.) On the complaint of any person that any parent of a child under sixteen years of age has failed to provide the child with adequate maintenance, a Justice of the Peace may issue his summons to the parent requiring him to answer the complaint. Magistrate may make order against parent for maintenance of child under sixteen years.

10 (2.) The term "parent" as used in this Act means the following persons in respect of any child other than a child which has been adopted by any person under an adoption order which remains in force:— "Parent" defined.

(a.) The father of a legitimate child:

15 (b.) The mother of an illegitimate child:

(c.) The mother of a legitimate child, if the mother is a widow, or has the custody of the child by virtue of the decree or order of any Judge, Magistrate, or Court of justice:

20 (d.) The husband of the mother of any child, whether legitimate or illegitimate, if the child was born before the marriage of the mother with her said husband, and whether the mother is alive or dead.

(3.) The term "parent" as used in this Act means the following persons in respect of any child which has been adopted by any person under an adoption order which remains in force:—

25 (a.) The adoptive father of the child:

(b.) The adoptive mother of the child, if there is no adoptive father living, or if the said mother has the custody of the child by virtue of the decree or order of any Judge, Magistrate, or Court of justice:

30 (c.) The husband of the adoptive mother of the child, whether the child was adopted before or after the marriage of the mother to her said husband, and whether the mother is alive or dead:

35 (d.) The widow of the adoptive father of the child, whether the child was adopted before or after her marriage to the said father.

(4.) On any such complaint as aforesaid, if the matter thereof is substantiated on oath the Justice of the Peace to whom the complaint is made, or any other Justice, may at any time, if he thinks fit, in lieu of issuing a summons or after the issue of a summons, issue his warrant to apprehend the defendant and cause him to be brought before a Magistrate to answer the complaint and to be further dealt with according to law.

45 (5.) A Magistrate hearing the complaint, if he is satisfied of the truth thereof, may, if he thinks fit, having regard to all the circumstances of the case, make a maintenance order against the parent directing him to pay towards the future maintenance of the child a reasonable sum not exceeding *twenty* shillings a week at such times and in such manner as the Magistrate thinks fit, until the child attains the age of sixteen years.

(6.) The Magistrate may also, in the like discretion, if he is satisfied that the defendant is of sufficient ability, order him to pay on account of the past maintenance of the child a sum not exceeding *fifty* pounds at such time or times and in such manner as the Magistrate thinks fit. 5

(7.) Such an order in respect of past maintenance may be made although the child is dead at the time of the complaint or at the time of the order.

(8.) When the parent and child are living apart from one another, and the Magistrate is satisfied that there is reasonable cause 10 for the child continuing so to live apart from its parent, the parent shall not be deemed to have made provision for the adequate maintenance of the child merely by reason of the fact that he is willing and ready to support the child if and so long as the child lives with him. 15

Liability of parent not affected by agreement.

24. No agreement made between a parent and any other person shall be effective to take away or restrict any liability imposed on the parent by this Act to provide any child with adequate maintenance, or affect the operation of any maintenance order made under this Act or the right of a Magistrate to make any such order. 20

Parent or child need not be resident in New Zealand.

25. Any complaint or order may be made under this Part of this Act, whether the parent or child is resident in New Zealand or elsewhere.

Part I hereof not affected by this Part.

26. Nothing in this Part of this Act shall be so construed as to restrict or otherwise affect the provisions and operation of Part I of 25 this Act.

PART V.

GENERAL PROVISIONS AS TO ORDERS.

Magistrate may require defendant to give security for obedience to maintenance order.

27. (1.) Whenever a maintenance order is made under this Act, the Magistrate making the same may, by the same order, or he or 30 any other Magistrate may by an order made at any subsequent time on the complaint of any person that default has been made in obedience to the maintenance order, direct the defendant to give security for his obedience to the maintenance order.

(2.) Whenever an affiliation order is made under section *nine* 35 of this Act before the birth of an illegitimate child, the Magistrate making the order may by the same order direct the defendant to give security for his obedience to any maintenance order which may thereafter be made against him in pursuance of the affiliation order.

(3.) Every such security shall, as the Magistrate requiring it 40 determines, be either the deposit of such sum of money as he directs (not exceeding *two* hundred pounds) with the Public Trustee or a bond to the Public Trustee (with one or more sureties approved by the said Magistrate or by any other Magistrate) in such sum as the Magistrate requiring the security determines (not exceeding *two* 45 hundred pounds) conditioned for due obedience to the maintenance order.

(4.) The Magistrate requiring the security may, by warrant under his hand, commit the defendant to prison until the order requiring the security is complied with; but no person shall be 50 imprisoned under any such warrant for a longer period than six months.

(5.) If and as often as, after any such deposit has been made by way of security, any money payable under the maintenance order is in arrear and unpaid, the Public Trustee may, on the application of the person to whom the money so in arrear is payable in
5 pursuance of the maintenance order, pay to that person out of the deposit the sum so in arrear.

(6.) If and as often as, after any such bond has been given as aforesaid by way of security, any money payable under the maintenance order is in arrear and unpaid, the person to whom the arrears
10 are payable in pursuance of the maintenance order, or any other person authorised by a Magistrate from time to time in that behalf, may in his own name recover the amount of the arrears from any person or persons liable on the bond, by action in a Magistrate's
15 arrears were a debt due by such person or persons to the plaintiff; provided that no moneys shall be so recovered in any such action or actions in excess of the penalty of the bond.

(7.) Any Magistrate may, on the application of the person by whom any such deposit has been made, or of his executors, adminis-
20 trators, or assigns, and on being satisfied that the security is no longer required, make an order directing the deposit or the residue thereof to be repaid by the Public Trustee to the applicant, and the same shall be repaid, without interest, accordingly.

28. Any maintenance order may direct the moneys payable
25 thereunder to be paid either to the person or persons or any of the persons in respect of whose maintenance the order is made, or to any other person, or to the Clerk for the time being of any Magistrate's Court to be specified in the order, and all such money shall be payable in accordance with the tenor of the order.

Payment of moneys under maintenance order.

30 29. (1.) Whenever a Magistrate has made under Part II or Part IV of this Act an order for the maintenance of any child, whether legitimate or illegitimate, the Magistrate may by that order, or he or any other Magistrate may at any subsequent time by any other order made on the application of any person, appoint some fit
35 person who, with his own consent, shall have the custody of the child so long as the maintenance order remains in force, and the person so appointed shall thereafter have the custody of the child accordingly to the exclusion of any other person, and shall have in respect of the child the same powers, rights, duties, and liabilities as
40 if he had been appointed the guardian of the child by the Supreme Court.

Magistrate may direct custody of child during currency of maintenance order.

(2.) Any Magistrate may at any time, on the application of any person, revoke any such appointment and make any other appointment in lieu thereof.

45 30. (1.) Where there are two or more persons liable under this Act for the maintenance of the same person, nothing in this Act shall be so construed as to prevent the making of distinct maintenance orders against any or all of the persons so liable, either by the same or by different Magistrates, and either at the same time or at
50 different times, and either under the same or under different provisions of this Act.

Magistrate may make orders against two or more persons in respect of the same destitute person.

(2.) The fact that an order has been made for the full amount of *twenty* shillings a week against one person shall not be a ground for refusing to make an order for the full amount or any part thereof against another person.

(3.) When two or more maintenance orders are in force in respect of the maintenance of the same person, a greater aggregate sum than *twenty* shillings a week shall not be recoverable under the said orders in respect of the future maintenance of that person, but in all other respects each such order shall be enforceable according to its tenor irrespective of the existence of the others. 5

Recovery by near relative from parent or husband of money paid in respect of destitute child or wife.

31. (1.) When under the compulsion of a maintenance order any near relative, other than a parent as defined in section *twenty-three* of this Act, has paid any money in respect of the maintenance of any child, whether legitimate or illegitimate, the amount so paid shall constitute a debt due and payable to that near relative by any person who at the time when the money was so paid was the parent of the child within the meaning of the said section *twenty-three*, or had been theretofore adjudged to be the father of the child; and where there are two or more persons so liable for the debt, their liability shall be joint and several. 10

(2.) When under the compulsion of a maintenance order any near relative has paid any money in respect of the maintenance of a married woman, the amount so paid shall constitute a debt due and payable to that near relative by the husband of the married woman. 15

Moneys due under maintenance order to constitute a debt provable in bankruptcy.

32. (1.) If any person against whom a maintenance order has been made is thereafter adjudicated a bankrupt, or files a petition to be so adjudicated, all moneys due and unpaid at the date of the adjudication, or of the filing of the petition, as the case may be, shall constitute a debt provable in the bankruptcy. 20

Bankrupt not released from personal liability under maintenance order.

(2.) No such bankruptcy and no discharge thereunder shall release the bankrupt from any personal liability under the order or from any proceedings for the enforcement thereof, or for the punishment of any breach thereof, whether in respect of moneys due at the time of the adjudication or of the filing of the petition, or accruing due thereafter, or shall affect any bond or other security for the observance of the order, or the liability of any property to be made available in satisfaction of the order, other than property which is or becomes assets in the bankruptcy. 25

Moneys due at death of person liable under maintenance order may be paid out of estate.

33. On the death of any person against whom a maintenance order has been made under this Act, any money in arrear and unpaid under the order at the time of his death shall constitute a debt payable out of his estate, but no future payments shall be recovered under the order, whether out of the estate or otherwise. 30

Service of summons on committee or on Public Trustee where person against whom order sought is of unsound mind.

34. (1.) When any person against whom an order is sought under this Act is a person of unsound mind, of whose estate a committee has been appointed, or whose estate is administered by the Public Trustee in the exercise of his powers over the estates of persons of unsound mind, the summons on any complaint under this Act shall be served on the committee or on the Public Trustee as the case may be, instead of on the person of unsound mind; and the committee or Public Trustee shall thereupon represent and act for the person of unsound mind in all proceedings thereunder, and the 35

like proceedings may be taken and the like order made as if that person were of sound mind and had been duly served with the summons.

(2.) All moneys payable under any order so made shall be paid by the committee or Public Trustee out of the estate of the person of unsound mind according to the tenor of the order, subject, however, to all other debts and liabilities of the person of unsound mind so far as the committee or Public Trustee has notice thereof.

35. (1.) Any Magistrate by whom an order has been made or refused under this Act may, if in his discretion he thinks fit, on the application *ex parte* of the complainant or defendant made within six months after the date of the hearing, grant a rehearing of the complaint, and may upon the rehearing cancel, vary, or confirm any order so made, or may make an order in pursuance of the complaint.

Application for rehearing.

(2.) Notice of any such rehearing shall be given to such persons and in such manner as the Magistrate directs.

36. (1.) Any Magistrate may at any time, on the complaint on oath of any person, make an order cancelling, varying, or suspending any order made under this Act, whether by himself or by any other Magistrate, or substituting a new order therefor, on the ground—

Magistrate may cancel, vary, or suspend order in certain cases.

(a.) That the order so made was obtained by fraud or perjury; or
(b.) That since the making of the order new and material evidence has been discovered; or

(c.) That since the making of the order the circumstances have so changed that the order ought to be so cancelled, varied, or suspended, or that a new order ought to be substituted therefor.

(2.) The power hereby conferred to cancel or vary an order shall include the power to remit, wholly or in part, any arrears due under the order, and any such arrears may be remitted either on the grounds hereinbefore in this section mentioned, or, if the Magistrate in his discretion thinks fit, on the ground that the person liable for the arrears is not of sufficient ability to pay the same.

(3.) A Magistrate shall not under this section cancel, vary, or suspend any order made by another Magistrate, unless the first-mentioned Magistrate is satisfied that it is not reasonably practicable that the complaint should be heard by the Magistrate who made the order complained of.

(4.) When any complaint is made under this section a summons to answer the same shall be issued to such person or persons as the Magistrate directs.

PART VI.

ENFORCEMENT OF ORDERS.

37. (1.) All moneys payable under any order made under this Act shall, so soon as they are in arrear and unpaid, constitute a debt due by the person against whom the order was made to the person to whom the moneys are payable in pursuance of the order, and those moneys may be recovered by action accordingly in any Magistrate's Court or in any other Court of competent jurisdiction.

Moneys payable under order to constitute a debt, and may be recovered by action.

(2.) On any judgment so recovered the like proceedings by way of execution or otherwise may be taken as in the case of any other judgment for a debt, but no such judgment shall effect any merger of the debt in respect of which it has been recovered, nor shall any such action or judgment so operate as to preclude, restrict, or affect any other proceedings that might have been taken under this Act in pursuance of the order if no such judgment had been obtained; but all other proceedings under this Act may be taken concurrently or successively with proceedings in respect of the said action or judgment.

Magistrate may issue warrant of distress in case of default of payment under order.

38. Whenever any payment directed to be made by any order under this Act is in arrear and unpaid for one week, any Magistrate may, if he thinks fit in his discretion, issue his warrant of distress for the purpose of levying the same or so much thereof as shall then remain unpaid, and all proceedings may be had under the Justices of the Peace Act, 1908, for the execution of the warrant and in pursuance thereof, as if it were issued in respect of a penalty adjudged upon a conviction; but, save as provided by this Act, no warrant of commitment shall be issued in lieu of or in pursuance of any such warrant of distress.

Magistrate may make attachment order against employer or other person owing money to person against whom a maintenance order issued.

39. (1.) When any maintenance order is made under this Act, the Magistrate making the same or any other Magistrate may, at the same or any subsequent time, on the application of any person, make an attachment order in pursuance of this section.

(2.) Any such attachment order may be made against any person who is proved to the satisfaction of the Magistrate to be an employer of the defendant against whom the maintenance order is made.

(3.) Any such attachment order may be made *ex parte* without notice to the defendant or his employer, but a duplicate thereof shall be served upon the employer either personally or by leaving the same at his place of abode, or at his place of business, or at any of his places of business.

(4.) Any such attachment order may declare that the moneys due and payable, or at any time or from time to time to become due and payable, under the maintenance order shall, by way of weekly payments of such amount as the Magistrate thinks fit and specifies in the attachment order, be a charge on any salary or wages which from time to time, and at any time while the attachment order remains in force, become due and payable by the employer to the defendant.

(5.) The charge so created shall be deemed to accrue from week to week, and on such day of the week as is specified in that behalf in the attachment order.

(6.) The attachment order may be made either for a fixed period, or so as to remain in force until cancelled in accordance with the provisions in that behalf hereinafter contained.

(7.) The charge so imposed shall attach to all wages or salary which becomes due by the employer to the defendant at any time while the attachment order is in force, whether the contract of employment in respect of which the wages or salary so becomes due existed at the date of the attachment order or not.

(8.) Any such attachment order may be at any time cancelled, on the application *ex parte* of any person, by the Magistrate making the same, or by any other Magistrate, on good cause being shown to the satisfaction of the Magistrate why the order should be so cancelled; and on notice of the cancellation being served on the employer in manner aforesaid the order shall cease to have effect with respect to any wages or salary which thereafter becomes due and payable by him.

(9.) Every such attachment order shall take effect on the service of a duplicate thereof on the employer in manner hereinbefore provided.

(10.) So long as the attachment order remains in force the employer shall from time to time, so often as any moneys become due and payable by him to the defendant by way of salary or wages, deduct therefrom such sum as is sufficient to satisfy the charge thereon so far as the same has accrued before the day on which the said wages or salary so becomes due and payable, and shall pay the amount so deducted to the person specified in that behalf in the attachment order, who may, as the Magistrate thinks fit, be either the Clerk for the time being of a Magistrate's Court or any other person.

(11.) All sums so deducted and paid shall be deemed, to the extent thereof, to have been paid by the employer in satisfaction of the wages or salary payable by him to the defendant, and to have been paid by the defendant in satisfaction of his liability under the maintenance order.

(12.) If and as often as the employer makes default in the payment of any money in satisfaction of any such charge, that money shall become a debt due by him to the person to whom the same is payable in accordance with the terms of the attachment order, and may be recovered by that person by action in any Court of competent jurisdiction.

(13.) If the person to whom that money is so payable in accordance with the terms of the attachment order is the Clerk for the time being of a Magistrate's Court, he may, on any such default as aforesaid, assign the said debt, by writing under his hand, with the leave of any Magistrate, to such other person as the Magistrate thinks fit; and that person may thereupon in his own name demand, sue for, and receive the said sum as if it was payable to him in accordance with the order.

(14.) The charge created by any such attachment order shall prevail over and have priority to any assignment made or charge created by the defendant, whether before or after the making of the attachment order against him, and the order shall have the same effect as if no such assignment or charge had been so made or created.

(15.) Section twenty-seven of the Wages Protection and Contractors' Liens Act, 1908, shall have no application to any attachment under the provisions of this section.

(16.) The employer in making any deduction or payment in pursuance of the attachment order, and in accordance with the

terms thereof, shall not be concerned to make inquiry as to whether any moneys are due and payable under the maintenance order, or be affected by any notice to the contrary.

Procedure.

40. All proceedings authorised by this Act to be taken in execution of any order under this Act, or otherwise in pursuance of any such order, may be taken concurrently or successively with any other proceedings so authorised. 5

PART VII.

MAINTENANCE BY PUBLIC OR CHARITABLE INSTITUTIONS.

Magistrate may make order in favour of charitable institution.

41. When any person in respect of whose maintenance any maintenance order is made under this Act is at the time of the making of the order maintained wholly or in part by, in, or at the cost of any public or charitable institution, or in receipt of any pecuniary or other relief from any such institution, the Magistrate making the order may therein direct that the moneys payable thereunder or any part thereof shall be paid to that institution, or to any person on behalf of that institution, to be applied in defraying the expenses of the maintenance or relief so afforded. 10 15

Magistrate may vary existing order and direct payment to charitable institution.

42. When any person in respect of whose maintenance any maintenance order has been made is afterwards during the subsistence of the order maintained wholly or in part by, in, or at the cost of any public or charitable institution, or during that period receives any pecuniary or other relief from any such institution, any Magistrate may, on application made *ex parte* by any person, vary the order by directing that the moneys payable thereunder or any part thereof shall be paid to that institution, or to some person on behalf of that institution, to be expended in defraying the expenses of the maintenance or relief so afforded. 20 25

Cost of maintenance or relief by public or charitable institution to constitute debt to Crown or trustees, &c.

43. (1.) When any person is maintained wholly or in part by, in, or at the cost of any public or charitable institution, or receives any pecuniary or other relief from any such institution, the cost of the maintenance or relief so afforded shall be a debt due to the Crown in the case of any public institution, and to the trustees or corporation of any charitable institution, and recoverable by action in any Court of competent jurisdiction. 30 35

(2.) The said debt shall be due and payable—

(a.) By the person so maintained or relieved :

(b.) By the husband of that person :

(c.) By any parent, as defined in section twenty-three of this Act, of any child so maintained or relieved : 40

(d.) By any person who has, whether before or after the maintenance or relief has been afforded, been adjudged, under this or any Act hereby or heretofore repealed, to be the father of any illegitimate child so maintained or relieved.

Recovery of debt.

(3.) Every debt so incurred in respect of a public institution shall be recoverable by action at the suit of the Crown, or of any person authorised by any Minister of the Crown. 45

(4.) On the death or bankruptcy of any person by whom any debt is owing under this section, the debt, so far as it has accrued due at the time of his death or at the commencement of the bank- 50

ruptcy, but no further, shall be recoverable from his estate or provable in his bankruptcy, as the case may be.

(5.) Nothing in this section, or in any action or judgment instituted or obtained thereunder, shall so operate as to take away
5 or restrict the power of a Magistrate to make a maintenance order against any person under this Act.

(6.) When any liability is imposed by this section on two or more persons in respect of the maintenance or relief of the same person, their liability shall be joint and several, and every person
10 paying any money in discharge of that liability shall be entitled to recover from any other person so liable, by action in any Court of competent jurisdiction, such sum by way of contribution or indemnity as the Court thinks just in the circumstances of the case.

(7.) Nothing in this section shall so operate as to take away or
15 restrict the liability of any person under any agreement made by him for the maintenance or relief of any person.

(8.) Every debt created by this section shall be deemed to accrue due from day to day as the maintenance or relief is afforded, and no moneys shall be recovered under this section unless sued for
20 within two years after the same have become due, unless it is proved that the defendant, at the time when the moneys became due, was of sufficient ability to pay the same.

(9.) The cost of the maintenance or relief of any person shall be deemed to be such sum as is agreed upon between the person so
25 liable and any person by whom or on whose behalf the cost is recoverable, or, in default of any such agreement, such sum as is reasonable.

PART VIII.

OFFENCES.

30 44. Every person against whom a maintenance order has been made under this Act, and who, while any moneys payable under the order are in arrear and unpaid, leaves or attempts to leave New Zealand, shall be guilty of an indictable offence punishable by
35 imprisonment with hard labour for any term not exceeding *twelve* months.

Leaving New Zealand without making payment under maintenance order.

40 45. Every person against whom a maintenance order has been made under this Act, and who at any time thereafter leaves or attempts to leave New Zealand with intent to make default in obeying that order, shall be guilty of an indictable offence punishable
by imprisonment with hard labour for any term not exceeding *twelve* months.

Leaving New Zealand with intent to disobey a maintenance order.

45 46. Every person against whom any complaint has been made under this Act, and who has been served with a summons issued in pursuance of the complaint, or knows that a complaint has been so
made against him, and who thereafter and before the complaint has been heard and determined leaves or attempts to leave New Zealand, with intent to make default in obeying any order that may thereafter be made against him in respect of the matter of the complaint, shall
50 be guilty of an indictable offence punishable by imprisonment with hard labour for any term not exceeding *twelve* months.

Leaving New Zealand after complaint, but before maintenance order made.

Leaving New Zealand while failing to make adequate provision for maintenance of wife.

47. Every person who without reasonable cause fails to provide his wife with adequate maintenance, and who at any time while failing so to do leaves or attempts to leave New Zealand, shall be guilty of an indictable offence punishable by imprisonment with hard labour for any term not exceeding *twelve* months. 5

Leaving New Zealand while failing to provide for maintenance of child.

48. Every parent within the meaning of section twenty-three of this Act who without reasonable cause fails to provide any child with adequate maintenance, and who at any time while failing so to do leaves or attempts to leave New Zealand, shall be guilty of an indictable offence punishable by imprisonment with hard labour for 10 any term not exceeding *twelve* months.

Leaving New Zealand without making provision for maintenance of wife or child during absence.

49. Every person who is the husband of any woman or a parent of any child within the meaning of section twenty-three of this Act, and who leaves or attempts to leave New Zealand with the intention of failing without reasonable cause to make adequate provision for the maintenance of that wife or child during his absence, shall be guilty of an indictable offence punishable by imprisonment with hard labour for any period not exceeding *twelve* months. 15

Person against whom affiliation order made leaving New Zealand without permission of Magistrate.

50. If any person against whom an affiliation order has been made under the authority of section *nine* of this Act leaves or attempts to leave New Zealand without the permission in writing of a Magistrate at any time within nine months after the making of the order, he shall be guilty of an indictable offence punishable by imprisonment with hard labour for any period not exceeding *twelve* months. In any prosecution for any such offence the burden of proving that the permission of a Magistrate was so given shall be upon the defendant. 20 25

What constitutes act of leaving or attempting to leave New Zealand.

51. (1.) Every person shall be deemed to leave New Zealand within the meaning of this Act who goes out of New Zealand with intent to reside permanently or temporarily in any other country, and every person shall be deemed to attempt to leave New Zealand within the meaning of this Act who does any act with intent to leave New Zealand. 30

(2.) No warrant for the apprehension of any person charged with any offence against any of the last *seven* preceding sections shall be issued except by a Magistrate. 35

Proof of intent in prosecutions under this Act.

52. In any prosecution for an offence against this Act the fact that the defendant has at any time within three years after leaving New Zealand wilfully and habitually made default in obeying an order of maintenance or in providing his wife or any child with adequate maintenance shall be sufficient evidence, unless the contrary is proved, that the defendant left New Zealand with intent so to make default. 40

Failure to pay maintenance moneys for one month.

53. (1.) Every person who makes default for fourteen days in the payment of any money payable by him under a maintenance order, shall be guilty of an offence, and shall on summary conviction thereof before a Magistrate be liable to imprisonment with hard labour for any term not exceeding *six* months. 45

(2.) No such imprisonment shall operate so as to extinguish or affect the liability of the defendant under the maintenance order. 50

Wilful failure to maintain wife or children an offence.

54. (1.) Every person who wilfully and without reasonable cause fails to provide his wife with adequate maintenance, and every parent within the meaning of section twenty-three of this Act

who wilfully and without reasonable cause fails to provide any child with adequate maintenance, shall be guilty of an offence punishable on summary conviction by imprisonment for *six* months.

(2.) If on the hearing of any complaint under Part III or Part 5 IV of this Act that the defendant has failed to make adequate provision for the maintenance of his wife or child it is proved to the satisfaction of the Magistrate (whether the defendant is present before him or not) that the defendant has in respect of such failure committed an offence against this section, the Magistrate may, if he 10 thinks fit in the exercise of his discretion, and either in addition to or in lieu of making a maintenance order against the defendant, convict him of that offence in the same manner as if the hearing of the complaint was the hearing of an information for that offence.

(3.) Save where the defendant has been so convicted, no such 15 complaint as aforesaid shall be any bar to a prosecution by way of information for the same offence.

55. Every indictable offence against this Act shall also be an offence punishable on summary conviction by imprisonment for *six* months, but no person shall be punished for the same offence both 20 on indictment and on summary conviction.

Indictable offences also punishable summarily.

PART IX.

PROCEDURE.

56. (1.) All proceedings under this Act, whether by complaint or information, may be taken under the Justices of the Peace Act, 25 1908, and shall be subject to the provisions of that Act so far as applicable, and so far as those provisions are consistent with this Act.

Proceedings may be taken under Justices of the Peace Act.

(2.) The fees specified in the Third Schedule of the Justices of the Peace Act, 1908, shall not be taken or payable in respect of 30 proceedings under this Act.

57. The limitation of time in the Justices of the Peace Act, 1908, within which informations must be laid or complaints made shall not apply to informations or complaints under this Act.

Limitation of time for informations under Justices of the Peace Act not to apply.

58. Notwithstanding anything to the contrary in the Justices 35 of the Peace Act, 1908, any information or complaint under this Act may comprise more than one matter of information or complaint against the same person (whether under the same or under different Parts of this Act), and any conviction, order, summons, warrant, or other process under this Act may relate to more than one matter of 40 information or complaint accordingly.

Information or complaint may comprise more than one matter.

59. In all proceedings under this Act, whether by way of information or complaint (other than prosecutions for an indictable offence), and whether by way of hearing in the first instance or by way of appeal, or otherwise howsoever, the Magistrate or Court may 45 receive any evidence that he or it thinks fit, whether the same is otherwise admissible in a Court of law or not.

Evidence receivable in proceedings need not be strictly legal evidence.

60. In all proceedings under this Act by way of complaint, whether by way of hearing in the first instance, or by way of appeal, or otherwise howsoever, the complainant and defendant, and the 50 husband or wife of the complainant or defendant, shall be admissible and compellable witnesses.

Who may be witnesses in proceedings under Act.

Evidence of
maintenance order.

61. In all proceedings under this Act, whether by way of information or complaint, and whether summary or by way of indictment, and whether by way of hearing in the first instance, or by way of appeal, or otherwise howsoever, any document purporting to be an order, or a copy or duplicate of an order, made under this Act or under the Destitute Persons Act, 1908, or under the Destitute Persons Act, 1894, and purporting to be signed by any Magistrate or to be certified as a true copy by the Clerk of any Magistrate's Court or by any Magistrate, shall be received as sufficient evidence of the existence, validity, and purport of that order, unless the contrary is proved. 5 10

Burden of proof on
defendant in certain
cases.

62. (1.) In all proceedings under this Act, whether by way of information or complaint, and whether summary or by way of indictment, and whether by way of hearing in the first instance, or by way of appeal, or otherwise howsoever, the burden of proving, so far as that proof is material, that the defendant is not the near relative, or husband, or wife, or parent of any person as alleged in the complaint or information, or that the defendant is not of sufficient ability to contribute to the maintenance of any person, or that any person alleged in the information or complaint to be a destitute person is not destitute, shall lie upon the defendant. 15 20

(2.) Nothing in this section shall apply to any proceedings under Part II of this Act, or to the proof that any person is or is not, or has or has not been adjudged to be, the father of an illegitimate child. 25

Complaints to be
determined by
Magistrate.

63. (1.) Every complaint made under this Act shall be heard and determined by a Magistrate only.

(2.) Every information by way of summary proceedings for an offence against this Act shall be heard and determined by a Magistrate only. 30

Proceedings where
defendant absent
from New Zealand
or cannot be found.

64. When any complaint has been made under this Act, and it is proved to the satisfaction of a Magistrate that the defendant is absent from New Zealand, or that his residence is unknown, or that he keeps himself concealed or away from his usual place of residence so that the cannot be found, the Magistrate may, if he thinks fit, whether a summons or warrant has been issued on the complaint or not, proceed *ex parte* to hear and determine the complaint in the same manner as if the defendant had been duly served with a summons. 35

Defendant in sum-
mary proceedings
to have no right of
trial by jury.

65. No proceedings under this Act shall be subject to the provisions of section one hundred and twenty-two of the Justices of the Peace Act, 1908 (relating to trial by jury). 40

Service of order
not necessary.

66. It shall not be necessary that any order made under this Act, or any minute thereof, shall be served upon the person against whom the order is made. 45

Forms.

67. (1.) The Governor may from time to time by Order in Council make regulations prescribing the forms to be used in all judicial proceedings under this Act, and all forms so prescribed and all forms to the like effect shall be valid and effectual.

(2.) In default of any such regulations and so far as they do not extend, all judicial proceedings under this Act may be in the forms 50

prescribed for similar proceedings by the Justices of the Peace Act, 1908, with such modifications as are required by the provisions of this Act.

5 68. When any order has been made on a complaint under this Act, or when any such complaint has been dismissed, or when a Magistrate has refused to make an order under any such complaint, any party aggrieved by the order, dismissal, or refusal shall have the same rights of appeal as are conferred by the Justices of the Peace Act, 1908, on persons against whom an order is made
10 for the payment of a sum of money exceeding five pounds, and all the provisions of that Act shall, with the necessary modifications, apply to any such appeal accordingly.

Appeal from decision of Magistrate.

15 69. In the case of any complaint under this Act the Magistrate shall have the same power of ordering costs to be paid as is conferred upon him by the Justices of the Peace Act, 1908, in the case of complaints; and any order so made as to costs shall be enforceable in the same manner as moneys ordered to be paid by a maintenance order under this Act, and all the provisions of this Act as to the recovery of such moneys shall apply and extend to the recovery
20 of costs.

Magistrate may order payment of costs.

25 70. (1.) On the hearing of any complaint under this Act the Magistrate may, if he thinks fit, on the application of any party to the complaint, make an order for the taking of the evidence of any person, whether a party to the complaint or not, before any other Magistrate, and may thereupon adjourn the hearing or further hearing of the complaint.

Magistrate hearing complaint may make order for taking of evidence before another Magistrate.

(2.) The order shall specify the Magistrate before whom evidence is to be so taken (hereinafter called the examining Magistrate), and the person or persons to be so examined.

30 (3.) The order shall be transmitted by the Magistrate making it to the examining Magistrate, together with a copy of the complaint.

(4.) The examining Magistrate shall thereupon, on the application of any party to the complaint, fix a day and place for the examination; and notice of the day and place so fixed shall be
35 served on the other party to the complaint in the same manner as if it were a summons issued to a defendant on a complaint under this Act:

Proceedings before examining Magistrate.

Provided that the examining Magistrate may, if he thinks fit, by writing under his hand, dispense with such service.

40 (5.) The examining Magistrate may thereupon at the time and place so appointed for the examination, or at any adjournment of the examination, hear the evidence of any person so to be examined.

(6.) Summonses to witnesses to attend the examination and to produce documents may be issued by any Magistrate or Justice of the Peace, and the procedure in respect thereof and on the examination shall be the same in all respects as if the examination were the
45 hearing of a complaint under this Act.

(7.) All evidence given at the examination shall be reduced into writing and signed by the examining Magistrate and by the person
50 giving the evidence, and such writing shall be forwarded by the examining Magistrate to the Magistrate by whom the order for examination was made, together with all documents admitted in evidence.

(8.) The costs of the examination shall be determined by the examining Magistrate in the same manner as if the examination were the hearing of a complaint under this Act. The amount so determined shall be certified under the hand of the said Magistrate, and the costs so certified may be dealt with by the Magistrate hearing the complaint in the same manner as if they had been incurred in the hearing thereof. 5

(9.) The Magistrate hearing the complaint may accept and act on the evidence so given under the provisions of this section in the same manner as if it had been given before him on the hearing of the complaint. 10

(10.) The Magistrate hearing the complaint may take judicial notice of the signature of any Magistrate on any document purporting to be signed under the provisions of this section, and shall presume, until the contrary is proved, that all proceedings under this section have been duly taken, and that all the provisions of this section have been duly complied with. 15

(11.) The pendency of any examination under the provisions of this section shall not suspend or prevent the exercise by any Magistrate of any power or jurisdiction which he would otherwise possess in respect of the complaint. 20

(12.) Every person giving evidence at any such examination shall be deemed to have given his evidence on the hearing of the complaint; and in any indictment or information it shall be sufficient to allege that such examination was held under the provisions of this section, and proof of the complaint having been made, and of the evidence of any person having been given at such examination, shall, without proof of any of the notices or other things herein required to be given or done, be sufficient evidence of the authority of the Magistrate to hold the same, and of the same having been so held; and the signature of every Magistrate to such written evidence shall be judicially noticed, and shall be sufficient proof that the evidence was given by the person whose evidence it is expressed to be. 25 30

Affiliation and maintenance orders made in Australia may be used in evidence in proceedings under this Act.

71. (1.) Where any order has been made in any part of the Commonwealth of Australia, whether before or after the commencement of this Act, by any Court or by any Judge, Magistrate, Justice of the Peace, or other judicial officer, by which any person is adjudged to be the father of an illegitimate child, or by which any person is ordered to pay any sum of money towards or in respect of the maintenance of the husband, wife, child, or any relative of that person, the order so made shall, on any complaint under this Act whereby any affiliation or maintenance order is sought against that person, be sufficient evidence, unless the contrary is proved to the satisfaction of the Magistrate, of the following facts so far as they are alleged in the order or appear by necessary or reasonable implication therefrom:— 35 40 45

- (a.) The paternity and age of any child, whether legitimate or illegitimate :
- (b.) The fact that the person against whom the order has been made is the husband or wife of any other person :
- (c.) The relationship existing, whether by birth or adoption, and whether legitimate or illegitimate, between the person against whom the order has been made and any other person : 50

(d.) The ability of the person against whom the order has been made to contribute to the maintenance of any other person :

(e.) The fact that any person is a destitute person, or has been deserted or left without adequate means of support by the person against whom the order has been made.

(2.) Any such order as aforesaid may be sufficiently proved by the production of a document purporting to be a copy thereof under the seal of the Court by which the order was made, or under the hand of any Judge, Magistrate, Justice of the Peace, or other judicial officer by whom or by whose Court the order was made ; and on the making or hearing of any complaint under this Act the Justice of the Peace or Magistrate by whom the same is taken or heard may take judicial notice of any such seal or signature.

(3.) If any complaint under section *eight* of this Act is accompanied by any such copy of any such order as aforesaid, it shall not be necessary that the complaint should be substantiated on oath, and all proceedings thereunder may be taken in the same manner as if the complaint had been made on oath.

20

PART X.

MISCELLANEOUS.

72. No stamp duty shall be chargeable on any document required for the purposes of this Act.

Exemption from stamp duty.

73. (1.) The Governor may at any time, by Order in Council gazetted, declare that any body corporate or society established for any purpose of public charity or benevolence is a charitable institution within the meaning of this Act, and any such Order in Council may be at any time revoked.

Governor may declare certain bodies corporate to be charitable institutions.

(2.) The Governor may at any time, by Order in Council gazetted, declare that any institution (other than a prison) supported wholly or mainly out of the public revenues is a public institution within the meaning of this Act, and any such Order in Council may be at any time revoked.

74. This Act shall apply to all complaints made after the commencement thereof, whether the matter of the complaint arose before or after the commencement of this Act.

This Act to apply to complaints in respect of matters arising before its commencement.

75. (1.) The Destitute Persons Act, 1908, is hereby repealed.

(2.) All proceedings instituted under the said Act, and pending at the commencement of this Act, shall be continued under the provisions of this Act if those provisions are applicable thereto, and if not, may be continued under the provisions of the said Act as if it had not been repealed.

Repeal. Savings.

(3.) All orders made under the said Act or under the Destitute Persons Act, 1894 (including orders made in proceedings pending at the commencement of this Act), shall be deemed to have been made under the corresponding provisions of this Act (if any), and shall become subject to the provisions of this Act (including the provisions of Part VIII thereof) accordingly. If there is no such corresponding provision in this Act, any such order shall continue to be subject to the same provisions as if this Act had not been passed.

(4.) All charges or liens existing at the commencement of this Act and subject to the provisions of the Destitute Persons Act, 1908, shall continue to exist and to be subject to the provisions of that Act as if it had not been repealed.

Repeals.

76. (1.) Part II of the Married Women's Property Act, 1908 (relating to protection orders), is hereby repealed, but shall continue to apply to all orders made thereunder or under the Married Women's Property Protection Act, 1880, before the commencement of this Act, and to all proceedings pending thereunder at the commencement of this Act, and to all orders made in such proceedings. 5 10

(2.) Section fourteen of the Divorce and Matrimonial Causes Act, 1908, is hereby repealed.

Repeal.

77. (1.) Sections seventy-five to eighty-six of the Divorce and Matrimonial Causes Act, 1908 (relating to the summary separation of married persons), are hereby repealed, but shall continue to apply to all orders made thereunder or under the Married Persons Summary Separation Act, 1896, before the commencement of this Act, and to all proceedings pending thereunder at the commencement of this Act, and to all orders made in such proceedings. 15

(2.) The payment of money under any such order may be enforced in the same manner as the payment of money under a maintenance order made under this Act. 20

Section 72 of the Licensing Act amended.

78. (1.) Section seventy-two of the Licensing Act, 1908, is hereby amended by inserting in paragraph (b) thereof, after the words "The Married Women's Property Act, 1908," the words "or a decree of judicial separation under the Divorce and Matrimonial Causes Act, 1908, or a separation order under the Destitute Persons Act, 1909." 25

(2.) The said section seventy-two is hereby further amended by inserting the words "or decree" after the words "such order" wherever they occur. 30

Repeal.

79. Section fifty-one of the Infants Act, 1908 (relating to the liability of relatives for the maintenance of children in foster-homes under that Act), is hereby repealed.

Repeal.

80. Sections thirty-four, thirty-five, thirty-six, thirty-eight, thirty-nine, two hundred and ninety-eight, and two hundred and ninety-nine of the Lunatics Act, 1908 (relating to the maintenance of lunatics), are hereby repealed. 35